IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

CRL.A.No. 712 of 2003()

SC.375/2000 of ADDL.SESSIONS COURT (ADHOC I), KASARAGOD

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APPELLANT/ACCUSED:

REGHUNATHA, S/O.SANDARA SHETTY,
KOMMAMKALA, MEONJA VILLAGE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE,
MANJESHWAR POLICE STATION.

2. STATE REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.P. NO.4552 OF 2003 IN CRL. APPEAL NO. 712 OF 2003.

DISMISSED

5.10.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO.712 OF 2003

Dated this the 5th day of October, 2007

JUDGMENT

This appeal is filed against the judgment in S.C. No.375 of 2000 on the file of the Additional Sessions Court (Ad hoc I), Kasaragod. The appellant faced trial for the offence punishable under Section 55(a) of the Abkari Act.

2. The charge against the appellant - accused was that on 13.10.1998 at 6.45 p.m., the accused was found in possession of 40 quarter bottles of Indian made foreign liquor without any permit or licence. To prove the case against the accused, the prosecution examined PWs.1 to 3 and produced Exts.P1 to P5. On the side of the defence, DW.1 was examined and Exts.D1 to D6 were produced. On closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied the charge levelled against him. However, after considering the entire evidence, the trial court found the accused guilty under Section 55 (a) of the Abkari Act, convicted him thereunder and sentenced him to

undergo rigorous imprisonment for four years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months. The above conviction and sentence are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant has raised the following contentions in challenging the judgment of the trial court: (i) the finding of the trial court that the appellant was found in possession of 40 bottles of Indian made foreign liquor at the time and place of occurrence is not supported by any legally acceptable evidence, (ii) the evidence of PWs.1 and 3 would not show that the appellant was the person who was responsible for abandoning the hard board box containing 40 bottles of Indian made foreign liquor as there is no evidence to prove the identity of the person who was responsible for the same, (iii) PW.1 had not complied with the provisions of the Abkari Act and the Kerala Excise Manual while detecting the offence, seizing the contraband articles and taking the samples and (iv) the evidence of PWs.1 and 3 would not show that the contraband articles and the samples taken were produced

before the court in time.

5. The trial court accepted the evidence of PWs.1 and 3 to find that the appellant was found in possession of 40 bottles of Indian made foreign liquor (Boss Whisky) on 13.10.1998. PW.1 was the Sub Inspector of police of Manjeshwar Police Station during the relevant time who detected the offence. He had stated that while he was on law and order duty along with other police officials, he saw the accused standing with a had board box in his hand. He further stated that the accused abandoned the hard board box at the place of incident and ran away. PW.2 was the attester to Ext.P2 scene mahazar who turned hostile to the prosecution. PW.3 was the then Sub Inspector of Police of Kumbla Police Station who conducted part of the investigation. There is no evidence to show that it was the appellant - accused who had abandoned the hard board box containing 40 bottles of Indian made foreign liquor. It is also to be noted that the accused was not arrested at the spot or during investigation, but he was arrested after a lapse of one year. PW.1 had stated that " പ്രതി പിൻതിരിഞ്ഞാണ് ഓടിയത്. 60 മീറ്ററോളം പ്രതി ഓടി. സന്ധ്യമയങ്ങുന്ന നേരമാണ്. In this context, the case set up by the appellant when he was questioned under Section 313 Cr.P.C. is very relevant. He had stated that he had no connection with the case and that the case was foisted against him. He

also stated that there was some mistake in the identity as the father's name shown in the charge is not the name of his father. In this regard, the accused relied on Ext.D6 certificate issued by DW.1, the Village Officer. Further, even though PW.1 had a case that some people had told CWs.5 and 6 that it was the accused who had left the place of occurrence after abandoning the hard board box containing the contraband articles, these witnesses were not examined before the court. In the above circumstances, it is difficult to believe the evidence of PWs.1and 3 regarding the identity of the accused.

6. The next question to be considered is whether PW.1 had complied with the provisions of the Abkari Act and the Kerala Excise Manual while detecting the offence, seizing the contraband articles and taking samples. PW.1 had admitted before the court that the samples alleged to have been taken from the contraband articles seized from the accused and the residue were not signed by any independent witness. Even though as per Ext.P1 seizure mahazar, the contraband articles were seized from the accused, there is no evidence to show that the samples and the residue were produced before the court in time and were kept in safe custody. The only evidence in this regard is Ext.P3 forwarding note of PW.1 and Ext.P4 chemical analysis report, but it is seen that Ext.P3

contains only the signature of the Presiding Officer, but no date. In the above circumstances, this Court is not in a position to hold that the evidence of PWs.1 and 3 would prove the prosecution case against the accused - appellant beyond reasonable doubt. Hence, the appellant is entitled to the benefit of doubt.

7. Another point to be considered is regarding the finding of the trial court that the accused committed offence punishable under Section 55 (a) of the Abkari Act. As per the principles laid down by this Court in the decisions reported in **Surendran v. Excise Inspector, 2004(1) K.L.T. 404** and S**udhepan @ Aniyan v. State of Kerala, 2005(2) K.L.D. (Cri) 631,** to attract an offence under Section 55(a) of the Abkari Act, the prosecution must allege and prove that possession of the contraband articles was in connection with export, import, transport or transit. Though it was stated by PW.1 that the contraband articles were brought form the State of Karnataka, no evidence has been adduced in this regard. Further, PWs. 1 and 3 though gave evidence to the effect that the contraband articles were kept by the appellant for sale, no evidence has been adduced in this regard either. Hence, on this score also, the finding entered by the trial court is not sustainable.

8. After considering all the materials placed before this Court and the evidence adduced by the prosecution, this Court is of the view that the finding entered by the trial court that the appellant - accused committed offence punishable under Section 55(a) of the Abkari Act is not based on any legally acceptable evidence. Accordingly, the conviction entered and the sentence ordered against the appellant by the trial court are set aside. The appellant is found not guilty and he is acquitted of the charge levelled against him.

The Crl. Appeal is accordingly allowed. The bail bonds executed by the appellant shall stand cancelled.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.712/2003

JUDGMENT

5th OCTOBER, 2007